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February 17, 2005

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: September 22, 2004

Case Number: TSO-0147

This Decision considers the eligibility of XXXXXXXX XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, it is my decision that the individual's access authorization should be restored.

I. BACKGROUND

The individual is an employee of a Department of Energy (DOE) contractor, and was granted a DOE access authorization in 1990. In early September 2002, the individual submitted an Incident Report to the DOE indicating that on August 31, 2002 he had been arrested at an outdoor concert and charged with assaulting a police officer and interfering with a police officer. These alleged actions occurred while the individual was legally intoxicated. On April 4, 2003, the individual submitted another Incident Report indicating that on April 2, 2003, he had been arrested for Driving While Alcohol Impaired (DWAI). After these arrests, the DOE conducted two Personnel Security Interviews with the individual. In addition, the individual was evaluated in September 2003 by a DOE-consultant psychiatrist (the DOE-consultant psychiatrist), who issued a report containing his conclusions and observations).

In May 2004, the Manager for Personnel Security of the DOE area office where the individual is employed (the Manager) issued a Notification Letter to the individual. In this letter, the Manager states that the individual's behavior has raised security concerns under Section 710.8(j) and Section 710.8(l) of the regulations

governing eligibility for access to classified material. Specifically, with respect to Criterion (j), the Operations Office finds that the DOE-consultant psychiatrist concluded that the individual has been a user of alcohol habitually to excess and that he suffers from Alcohol Abuse in partial remission.

With respect to Criterion (l), the Notification Letter refers to the individual's arrest on August 31, 2002, for assaulting and interfering with a police officer. The Notification Letter also refers to the individual's April 2003 arrest for DWAI. 1/

The individual requested a hearing (hereinafter "the Hearing") to respond to the concerns raised in the Notification Letter. In his initial response to those concerns, the individual asserted that while he had no comment concerning the DOE-consultant psychiatrist's diagnosis. With respect to his August 2002 arrest, he stated that he plead guilty to a misdemeanor charge of interfering with an "executive officer" in order to avoid a trial, although he believed at the time that he was acting in defense of his brother. Individual's May 28, 2004 Request for Hearing.

The requested hearing in this matter was convened in December 2004 (hereinafter the "Hearing"). At the Hearing, the individual and his counsel did not contest the DOE-consultant psychiatrist's diagnosis of alcohol abuse. Accordingly, I find that the individual suffers from alcohol abuse subject to Criterion (j). The testimony at the Hearing focused chiefly on the concerns raised by the individual's past pattern of alcohol consumption and by the actions that led to the individual's August 2002 arrest, and on the individual's efforts to mitigate those concerns through abstinence from alcohol and recovery activities.

1/ The cited arrests are clearly the result of the individual's alcohol abuse, and are not the type of unusual behavior that is properly raised as an independent security concern. Prior to the Hearing, the DOE counsel notified the parties that the DOE Security Specialist in this proceeding had informed him that mitigation of the Criterion (j) concern in this case would concomitantly mitigate the Criterion (l) concerns. December 7, 2004 e-mail from the DOE Counsel to the parties. The DOE Counsel repeated this position at the Hearing. Hearing Transcript (TR) at 10-11. I therefore find that the Notification Letter's Criterion (l) concerns are part of the Criterion (j) concern of alcohol abuse.

II. REGULATORY STANDARD

In order to frame my analysis, I believe that it will be useful to discuss briefly the respective requirements imposed by 10 C.F.R. Part 710 upon the individual and the Hearing Officer. As discussed below, Part 710 clearly places upon the individual the responsibility to bring forth persuasive evidence concerning his eligibility for access authorization, and requires the Hearing Officer to base all findings relevant to this eligibility upon a convincing level of evidence. 10 C.F.R. §§ 710.21(b)(6) and 710.27(b),(c) and (d).

A. *The Individual's Burden of Proof*

It is important to bear in mind that a DOE administrative review proceeding under this Part is not a criminal matter, where the government would have the burden of proving the defendant guilty beyond a reasonable doubt. The standard in this proceeding places the burden of proof on the individual. It is designed to protect national security interests. The hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). *Personnel Security Review (Case No. VSA-0087)*, 26 DOE ¶ 83,001 (1996); *Personnel Security Hearing (Case No. VSO-0061)*, 25 DOE ¶ 82,791 (1996), *aff'd*, *Personnel Security Review (VSA-0061)*, 25 DOE ¶ 83,015 (1996). The individual therefore is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The regulations at Part 710 are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Thus, by regulation and through our own case law, an individual is afforded the utmost latitude in the presentation of evidence which could mitigate security concerns.

Nevertheless, the evidentiary burden for the individual is not an easy one to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905

(1991) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. In addition to his own testimony, we generally expect the individual in these cases to bring forward witness testimony and/or other evidence which, taken together, is sufficient to persuade the Hearing Officer that restoring access authorization is clearly consistent with the national interest. *Personnel Security Hearing (Case No. VSO-0002)*, 24 DOE ¶ 82,752 (1995); *Personnel Security Hearing (Case No. VSO-0038)*, 25 DOE ¶ 82,769 (1995) (individual failed to meet his burden of coming forward with evidence to show that he was rehabilitated and reformed from alcohol dependence).

B. Basis for the Hearing Officer's Decision

In personnel security cases under Part 710, it is my role as the Hearing Officer to issue a decision as to whether granting an access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I must examine the evidence in light of these requirements, and assess the credibility and demeanor of the witnesses who gave testimony at the hearing.

III. HEARING TESTIMONY

At the Hearing, testimony was received from eight persons. The DOE presented the testimony of the DOE-consultant psychiatrist. 2/ The individual, who was represented by counsel, testified and presented the testimony of his daughter, his wife, his direct supervisor, his deputy employee, a longtime friend/co-worker, and a social friend/employee.

2/ As indicated by the testimony of the DOE-consultant psychiatrist (TR at 13), he clearly qualifies as expert witness in the area of addiction psychiatry.

A. *The DOE-consultant psychiatrist*

The DOE-consultant psychiatrist testified that in September 2003 he evaluated the individual for alcohol problems and the instance of aggressive conduct that concerned the DOE. Based on all of the information that he collected and reviewed, the DOE-consultant psychiatrist concluded that the individual did not have a problem with aggression but that he did have a significant problem with alcohol.

I saw the public intoxication, assault of a police officer, as an isolated event of assault, but not an isolated event of alcohol. . . . I saw it as a behavior related to alcohol. I didn't see him as an assaultive person, so to speak. . . .

TR at 17. The DOE-consultant psychiatrist stated that the individual had admitted to drinking and driving on several occasions prior to his April 2003 DWAI. He concluded that these incidents coupled with his August 2002 and April 2003 arrests met the criteria for a diagnosis of alcohol abuse. TR at 17.

With regard to rehabilitation and reformation, the DOE-consultant psychiatrist testified that during his September 2003 evaluation, he believed that the individual was still making excuses for his behavior relating to alcohol, and that he was still minimizing those behaviors. TR at 18-19. He stated that the individual told him that he continued to drink modest amounts of alcohol until July 2003, when he began an alcohol education class. TR at 19. He therefore concluded in his September 2003 evaluation that the individual was in partial remission from alcohol abuse, because he had been abstinent for more than one month but less than a year. TR at 21. With regard to rehabilitation or reformation, he stated that the individual told him that he had attended some alcohol education classes and had completed the community service relating to his arrests. However, the DOE-consultant psychiatrist concluded in his 2003 evaluation that the individual needed to have a full year of abstinence from alcohol and to finish his alcohol-related probation. TR at 21-22. He also stated that the individual needed to fully accept the consequences of his behavior relating to alcohol.

In other words, the lying, the minimizing and the excuses would have to stop. He'd have to explain the discrepancies between what he tells one person and what he's told another, and just come clean with how bad things were.

TR at 22.

When questioned by the individual's counsel, the DOE-consultant psychiatrist stated that the individual's alleged lies and discrepancies "are not as major as some." TR at 24. In this case, he felt that at their 2003 interview the individual had minimized the amount of alcohol he was using and found excuses for his becoming intoxicated. TR at 24. The DOE-consultant psychiatrist testified that the individual's minimizing of his alcohol consumption prior to his April DWAI was probably the result of a lack of insight into his alcohol problem rather than an overt lie. TR at 26. At the Hearing the DOE-consultant psychiatrist also acknowledged that there were no discrepancies in the individual's statements about when he last consumed alcohol. At his July 2003 PSI, the individual stated that he last consumed alcohol on July 7, 2003 [PSI Transcript at 32], and at his September 2003 interview with the DOE-consultant psychiatrist, the individual told him that he had last consumed alcohol sometime in July 2003. TR at 30-31.

B. *The Individual*

The individual testified that he last consumed alcohol on July 7, 2003 when he consumed part of a beer when he was playing golf. He stated that he decided not to finish that drink.

My recollection was that I had part of a beer when we were playing golf, and it internally had some turmoil for me to do that, and then I said, "I have to stop this."

TR at 32. He stated that the only other occasion on which he consumed alcohol following his April 2003 DWAI arrest was in early June 2003, when he consumed part of a beer when he was at a restaurant with his wife. TR at 35. He asserted that other than taking one dose of NyQuil, he has consumed no alcohol since July 7, 2003. TR at 41. He stated that it is his intention never to drink alcohol again. TR at 42. He stated that he attended a two day alcohol education class in July 2003 because he was interested in gaining a better understanding of problems caused by alcohol. TR at 45-46. He also attended a court directed alcohol impact panel sponsored by Mothers Against Drunk Driving (MADD) in October 2003. TR at 46.

The individual testified that his April 2003 arrest took place after an evening function with his company.

After that, I would say 40 or 50 people went into [the hotel bar], where we had some drinks over a period of

time, and following that evening is when the state police officer pulled me over and administered any number of roadside sobriety tests and concluded that he had sufficient evidence to take me in, and I was over the limit for driving while ability impaired.

TR at 34. 3/ With respect to the April 2003 DWAI, the individual stated that the judge ordered that he be evaluated for alcohol classes, that he attend an alcohol impact panel, that he perform 24 hours of community service, and that he pay certain court costs. He testified that he has completed the evaluation and the community service, has attended the impact panel, and has paid the court costs. TR at 58-59. He also submitted a Probation Summary and other documents indicating that he completed his probation requirements by December 2003. Individual's Hearing Exhibits A, B and C.

The individual also described his August 2002 arrest that occurred while he was legally intoxicated. 4/ The individual stated that he was with his brothers and their wives at an outdoor concert. He said that his older brother's wife had fainted, and that his younger brother was assaulted when he tried to clear space for her in the crowd.

The next thing I know, there are two guys, one of them slamming [the individual's brother's] face down into the asphalt, and so I jumped on him and pulled him back, we fell on the ground, and unfortunately for me, he was a police officer . . . and he was quite agitated about it.

TR at 100-101. The individual stated that he was arrested and was charged with assaulting a police officer. In March 2003, he plead guilty to "interfering with an executive officer", paid a \$100 fine, and was sentenced to 250 hours of community service and to three years of unsupervised probation, which will end in March 2006. TR at 101-104. He stated that he has completed the

3/ The individual stated that he did not report or discuss the April 2003 DWAI arrest at his April 2003 PSI because he had believed that the security specialist's questions were confined to his August 2002 arrest. He stated that he reported the April DWAI arrest to the personnel manager at his work site. TR at 40-41.

4/ Although the arrest occurred while the individual was legally intoxicated, he stated that there was no alcohol-related conviction. TR at 106.

community service. See DOE Exhibit 17 at 4 and Individual's Hearing Exhibits D and E.

The individual testified that he has not attended any Alcoholics Anonymous (AA) meetings because he does not believe that it is necessary for him to participate in AA in order to maintain his sobriety. TR at 90-91. He asserts that he has reached his own decision to abstain from alcohol permanently and that his decision was strengthened based on what he heard in the alcohol awareness classes and on what he was told by the DOE-consultant psychiatrist at their interview. TR at 92. He stated that he occasionally drinks non-alcoholic beer and has a couple bottles of it at home. He testified there are some alcoholic beverages in his home that were given to him and his wife as gifts. TR at 94. Under questioning by the Hearing Officer, the individual declined to identify himself as alcoholic, but stated that he has decided not to place himself at risk for future problems with alcohol.

As I stated, some people can have a beer or two and be fine; some people, if they have a beer or two may have three or four. I don't ever want that stage to be set where I would be making that call.

TR at 97. He emphasized that keeping his security clearance was not the only factor motivating his decision to give up consuming alcohol. In this regard, he identified the "extraordinarily huge increase" in his automobile insurance and the example that he is setting for his children as other factors supporting his decision.

TR at 97.

C. The Individual's Daughter

The individual's daughter testified that she is in her early twenties and attending college in a nearby town. She stated that she is not living with her parents, but that she sees her father about every other day and on weekends when she visits her parents' home. She states that she has "most definitely" not seen him consume alcohol for more than a year and a half. She stated that there is alcohol in her parents' home, and that she has witnessed her father abstaining from alcohol when others are drinking. She said that her father has been "very adamant" in letting her and her younger sister know what a bad idea it is to be drinking.

We have conversations pretty much every time that I'm home, or if I'm going to go anywhere, about what exactly the legal limit is for alcohol consumption, and just not

to even try to have a drink of alcohol and then get in a car.

TR at 55. She concluded that her father is "very, very serious" about the dangers of drinking and driving. *Id.*

D. The Individual's Wife

The individual's wife testified that they have been married for more than twenty years. She stated that in the early years of their marriage, the individual would typically drink "two to three to four" beers on social occasions. She said that he would occasionally drink five or six beers. TR at 124. She said that she first became concerned that the individual was drinking too much in 2002 when he transferred into a high pressure position at work. TR at 125. She stated that just prior to his August 2002 arrest, the individual had consumed three mixed drinks and was under the influence of alcohol. TR at 130. She stated that following the individual's April 2003 arrest for DWAI, she drove him home from the police station and they discussed the individual's problem with alcohol

It was difficult. We talked about the issue [involving his August 2002 arrest] . . . and then to have it happen a second time - - a second alcohol-related issue several months later, we needed to address something at that point and something had to change.

TR at 136-137. She said that the individual was remorseful and told her that he was not going to drink any more. TR at 137. She believed that he was sincere about stopping drinking because "if he says he's going to do something, he does it, and his actions proved that."

He was never the kind of person that came home from work and drank every day. He just didn't do that. But if we were in a social setting, if we were at a football game or a baseball game, even as a family, he just did not drink alcohol.

TR at 137. She stated that she witnessed him consume alcohol on only one occasion following his April 2003 DWAI arrest.

We went home in June [2003] for our high school reunion, and my sister picked us up at the airport, and we stopped to have lunch, and he ordered a beer.

TR at 144. She testified that she was not aware of the portion of a beer that the individual stated that he consumed during a golf game in July 2003. *Id.* She testified that she and her husband continue to keep alcohol in their home so that they can offer it to guests. TR at 141. She stated that she has no concerns about the individual's ability to continue to be abstinent for the rest of his life, because he has made a decision to stop. TR at 140. She also confirmed that the individual learned a lot from the alcohol awareness course that he attended in July 2003 and from the MADD Panel that he attended later in October 2003. TR at 138-139.

E. The Individual's Direct Supervisor

The individual's direct supervisor testified that he has known the individual in a co-worker capacity since the individual arrived at their work site in about 1998, and that the individual has been either his deputy or one of his "direct reports" since 2001. The direct supervisor was aware of the individual's arrests involving alcohol in August 2002 and in April 2003. He stated that he and his wife were friends with the individual and his wife, and that they socialized frequently.

I've been to his house for dinner any number of times, he's come to my house for dinner, for social events. We go out together, either for business social events or personal interactions, because we're friends with [the individual] and his wife and their children. So it's several times a month, on average, over the last several years.

TR at 67-68. The individual's supervisor testified that prior to giving up alcohol, the individual would typically have five or six beers on social occasions. He stated that the individual's wife does not drink much at all and would often act as the designated driver when they went out together. TR at 68. He stated that the individual seemed able to handle the amount of alcohol he consumed and that he has never observed him drinking to excess. TR at 69. He testified that after the individual's April 2003 arrest, the individual was apologetic about his behavior and determined to stop drinking.

He essentially told me that he knew how much he had disappointed me, that his wife was about to throw him out of the house, and that he promised me that he was done drinking, that he was not going to drink anymore, and that he had to get his act together because he recognized that his career was on the line.

TR at 73. He said that he has not observed the individual drink alcohol since the evening prior to his April 2003 arrest, and that he believes that the individual has been completely abstinent from alcohol for at least eighteen months. He stated that he and the individual continue to have frequent social interactions where alcohol is present, and the individual has not consumed alcohol on these occasions. He believes that the individual will be able to maintain his sobriety. TR at 75.

F. The Individual's Deputy Employee

The individual's deputy employee stated that she and the individual were co-workers from the "early 2000's" until the individual was promoted to the level of manager. TR at 79. She was aware of individual's two arrests. She stated that it has been "quite a while" since she observed the individual consume alcohol at company social functions.

People do tend to drink at these things. I'm not going to be dishonest, they are usually parties, and people do drink, and it has been noted that [the individual] doesn't.

TR at 81. She stated that she would be "real surprised" if the individual resumed drinking. TR at 82.

G. The Individual's Longtime Friend/Employee

The individual's longtime friend/employee stated that he has known the individual for more than twenty years and has worked with him since September 2000, first as a co-worker and then as an employee. TR at 84-85. He stated that he currently sees the individual frequently, and that they play golf together, hunt together, and engage in other social activities. TR at 87. He stated that in previous years when he and the individual got together for a social event or a ball game, the individual would typically consume two or three beers. TR at 85. He testified that since the individual's April 2003 DWAI, the individual has not used alcohol as far as he knows. TR at 87. He stated that he often drinks alcohol when he socializes with the individual, and that the individual has no problem with that. TR at 88.

H. The Individual's Social Friend/Employee

The individual's social friend/employee stated that he has known the individual since 1990, when they served together in the military, that he helped to recruit the individual for their

current employer in 1998, and that he now works for the individual. TR at 114-115. He described the individual as "probably my best friend" at the work site, and stated that they spend a lot of time together outside the workplace because they share an interest in carpentry. He stated that in the summer of 2004, he and the individual helped a neighbor build a deck onto his home and "basically saw each other every weekend for a couple of months." TR at 117. He stated that the individual used to have a few beers at social functions, but he never saw the individual where he would exhibit symptoms of being drunk. TR at 116. He stated that "I wasn't keeping track, but I know it was over a year ago that he basically quit drinking at all." He has not seen him drink since then. TR at 117. He stated that the individual no longer consumes alcohol after weekend work projects or at parties, and has refused it when it was offered to him. TR at 119.

I. The DOE-consultant psychiatrist's Additional Testimony

Following the testimony of the other witnesses, the DOE-consultant psychiatrist was asked to evaluate what he had heard concerning the individual's efforts at maintaining his sobriety in recent months. The DOE-consultant psychiatrist stated that when he interviewed the individual in September 2003, he assumed that the individual would be required to undertake some alcohol treatment therapy in connection with his April 2003 DWAI, but that this did not occur. Nevertheless, the DOE-consultant psychiatrist concluded that the individual had demonstrated reformation from his diagnosis of alcohol abuse.

At this point, though it might have been beneficial to have some therapy back then, you've shown that you could get by without it. So, back then, it would have been insurance to get as much as you could, or even AA, but what you've done in eighteen months is you've shown you could maintain sobriety and show evidence of reformation without that. So I would say at this point, unless you start craving alcohol, you really don't need to go to the [Employee Assistance Program] or to AA. So I don't think you need any further treatment or monitoring.

TR at 147. The DOE-consultant psychiatrist stated that although the individual remained under probation for his August 2002 arrest and resulting conviction, he did not believe that the probation was responsible for the individual's continued sobriety. TR at 148.

The DOE-consultant psychiatrist concluded that the individual's demonstrated abstinence over the last eighteen months indicates

that he is in full remission from the diagnosis of alcohol abuse, and that the changes that he has made in his style of living demonstrate rehabilitation and reformation from that diagnosis. TR at 149-150.

IV. ANALYSIS

The individual believes that his seventeen months of sobriety and his dedication to future abstinence from alcohol fully mitigate the Criterion (j) security concerns arising from his diagnosis of alcohol abuse and his alcohol related arrests in August 2002 and April 2003. For the reasons stated below, I conclude that the individual's arguments and supporting evidence on this issue resolve these security concerns.

A. *The Individual's Abstinence from Alcohol*

In his September 2004 Statement and in his testimony at the Hearing, the individual contends that he has completely abstained from alcohol since July 7, 2003, a period of slightly more than seventeen months prior to the Hearing. 5/ I find that the individual's testimony on this issue was credible and that he has adequately corroborated his assertion with the testimony of a number of witnesses who spend significant time with the individual. The individual's wife has resided with the individual during this period. The individual's daughter sees her father several times a week and visits the family home on weekends. The individual's direct supervisor socializes with the individual and his wife several times a month. The individual's longtime friend/employee sees the individual frequently for golf games and hunting trips. The individual's social friend/employee does carpentry work with the individual and sees him frequently on weekends. All of these witnesses testified that they had not observed the individual consume alcohol since before July 2003, and believe that he is sincere in his determination to maintain his sobriety indefinitely.

B. *Individual's Recovery Activities and Current Status*

5/ The testimony of the DOE-consultant psychiatrist erroneously referred to a period of eighteen months of sobriety prior to the Hearing rather than seventeen months. However, in light of the fact that the DOE-consultant psychiatrist was clearly aware that the individual admitted to consuming some alcohol on July 7, 2003, I find that this was harmless error and does not affect the DOE-consultant psychiatrist's conclusions.

The testimony at the Hearing indicated that following the individual's April 2003 DWAI, the individual resolved to stop consuming alcohol. The individual asserts that on two separate occasions after this event he consumed portions of a beer, but that since July 7, 2003 he has maintained his sobriety. In late July 2003, he attended an alcohol education class, and in October 2003 he attended a panel on the impact of drunk driving sponsored by MADD. He has also completed extensive community service relating to both his 2003 DWAI and his August 2002 arrest that resulted in a conviction for interfering with an executive officer, an incident that occurred while the individual was legally intoxicated.

In the administrative review process, it is the Hearing Officer who has the responsibility for forming an opinion as to whether an individual with alcohol problems has exhibited rehabilitation or reformation. See 10 C.F.R. § 710.27. The DOE does not have a set policy on what constitutes rehabilitation and reformation from alcohol dependence, but instead makes a case-by-case determination based on the available evidence. Hearing Officers properly give a great deal of deference to the expert opinions of psychiatrists and other mental health professionals regarding rehabilitation and reformation. See, e.g., *Personnel Security Hearing (Case No. VSO-0027)*, 25 DOE ¶ 82,764 (1995) (finding of rehabilitation); *Personnel Security Hearing (Case No. VSO-0015)*, 25 DOE ¶ 82,760 (1995) (finding of no rehabilitation). At the Hearing, the DOE-consultant psychiatrist concluded that individual's demonstrated abstinence over the last eighteen months indicates that he is in full remission from the diagnosis of alcohol abuse, and that his commitment to continued sobriety and the changes that he has made in his style of living indicate rehabilitation. He did not see a need for the individual to undertake any further recovery activities such as counseling or attendance at AA unless he began to experience cravings for alcohol.

I agree with the DOE-consultant psychiatrist's conclusions. My positive assessment of the individual's demeanor and of the evidence presented at the Hearing convince me that the individual has maintained his sobriety since July 2003, that he has committed himself to lifelong sobriety, and that he has shared that commitment with his wife and his employer. In addition, the individual has demonstrated an ability to conduct his social and recreational activities without alcohol. These positive developments are all significant factors which indicate rehabilitation and reformation from the diagnosis of alcohol abuse. In light of these factors, I find that the individual has mitigated the DOE's Criterion (j) concern.

V. CONCLUSION

For the reasons set forth above, I find that the Notification Letter's derogatory information under Criterion (j) has been mitigated by sufficient evidence of rehabilitation and reformation from alcohol abuse. Accordingly, after considering all the relevant information, favorable or unfavorable, in a comprehensive and common-sense manner, I conclude that the individual has demonstrated that granting him access authorization would not endanger the common defense and would be clearly consistent with the national interest. It therefore is my conclusion that the individual's access authorization should be restored. The individual or the DOE may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods
Hearing Officer
Office of Hearings and Appeals

Date: February 17, 2005